

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 10, 2008

Charles R. Fulbruge III
Clerk

No. 08-40183
Conference Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ROGELIO GUEVARA-BARRERA

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:07-CR-1086-1

Before DAVIS, WIENER, and PRADO, Circuit Judges.

PER CURIAM:*

Rogelio Guevara-Barrera (Guevara) appeals the 30-month sentence imposed following his guilty-plea conviction for illegal reentry, in violation of 8 U.S.C. § 1326. He argues that the district court erred by imposing an eight-level sentencing enhancement pursuant to U.S.S.G. § 2L1.2(b)(1)(C). Specifically, he argues that, pursuant to the Supreme Court's decision in *Lopez v. Gonzales*, 549 U.S. 47 (2006), his second conviction for simple possession of marijuana under

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Texas law does not constitute an "aggravated felony" unless the Government conformed with the procedures in 21 U.S.C. §§ 844 and 851, which he asserts the Government failed to do in this case.

As Guevara concedes, his arguments are foreclosed by *United States v. Cepeda-Rios*, 530 F.3d 333, 335-36 & n.11 (5th Cir. 2008). Accordingly, the district court's judgment is AFFIRMED.